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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Walter Hörburger, et al
Serial No: 09/759,543
U.S. Filed: 1/12/2001
For: LEVEL
Examiner: 2859
Art Unit: Gail Kaplan Verbitsky

BOX: AF
Assistant Commissioner for Patents
Washington, D.C. 20231

SUBMISSION OF BRIEF ON APPEAL

SIR:

Submitted herewith is a Brief On Appeal in triplicate in support of the appeal filed October 16, 2002.

A check in the amount of \$ 160.00 to cover the fee pursuant to 37 CFR §1.17 (f) is enclosed.

Any additional fees or charges required at this time in connection with the application may be charged to Patent and Trademark Office Deposit Account No. 11-1835.

Respectfully submitted,

By F K K
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Dated: December 13, 2002

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D. C. 20231, on December 13, 2002.

By: F K K Date: December 13, 2002
Friedrich Kueffner



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Assistant Commissioner for Patents
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BRIEF ON APPEAL

S I R:

This Brief is submitted in support of the Appeal filed
October 16, 2002 from the Examiner's Final Rejection of claims 1
to 5 as set forth in the Office Action dated July 16, 2002.

12/20/2002 CV0111 00000026 09759543

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160.00 OP

REAL PARTY IN INTEREST

The present application is owned by Ing. Guido Scheyer Sola-Meßwerkzeuge Gesellschaft m.b.H. & Co. by virtue of an assignment recorded January 12, 2001 under reel 011458/frame 0272.

RELATED APPEALS AND INTERFERENCES

There are no presently pending related appeals and interferences.

STATUS OF CLAIMS

Claims 1 - 5 are the claims in the application and are the claims on appeal.

STATUS OF AMENDMENTS

An Amendment after final rejection in response to the Examiner's final rejection of the claims dated July 16, 2002 was not filed.

SUMMARY OF THE INVENTION

The present invention is directed to a level.

As illustrated in the drawing and described in the first paragraph on page 7 of the specification, the level includes a level body 1 and at least one bubble level 7 mounted in the level body 1. As described in the second paragraph on page 7 of the specification, the level body 1 is of a foamed metal.

As also described in the second paragraph on page 7 of the specification, the level body 1 is of foamed aluminum.

As described in the first paragraph on page 7 of the specification, the level body 1 is provided with a coating of synthetic material.

As described in the first paragraph on page 7 of the specification, the level body 1 has at least one recess 2, 3 for at least one bubble level.

As described in the second paragraph on page 7 of the specification, the level body 1 has an inner portion 5 of highly porous metal and portions 6 adjacent the surfaces of the level

body which are of a less or hardly porous metal and form an essentially closed outer skin.

ISSUES PRESENTED FOR REVIEW

Whether claims 1 and 2 are unpatentable under 35 U.S.C. §103(a) over Goss et al. in view of Smith et al., whether claims 3 and 5 are unpatentable under 35 U.S.C. §103(a) over Goss and Smith as applied to claims 1 and 2, and further in view of Hettinga, and whether claim 4 is unpatentable under 35 U.S.C. §103(a) as being unpatentable over Goss et al. and Smith et al. as applied to claims 1 and 2, and further in view of Provi.

GROUPING OF CLAIMS

Claims 2 and 4 stand or fall with claim 1.

Claims 3 and 5 are independently patentable.

ARGUMENT

It is respectfully submitted that the Examiner's rejection of claims 1 and 2 under 35 U.S.C. §103(a) as being unpatentable over Goss et al. in view of Smith et al. is in error because the

references do not disclose or suggest the present level as claimed.

The examiner states that the reference to Goss et al. shows a spirit level comprising a bubble level 10, a bubble 46, a recess and a housing. The examiner relies on Smith et al. for teaching that a float (level) can be made of foamed aluminum. The examiner argues that it would have been obvious to make the level disclosed by Goss et al. of foamed aluminum material as taught by the Smith reference so as to be a lightweight and corrosion-free device.

The cited prior art reference Smith et al. shows a floating boom for retaining oil contamination on bodies of water during weather conditions with strong winds that produce relatively short choppy waves. In col. 8, lines 30 to 35, it is described that the float 21 may be produced of foamed aluminum blocks.

Self-righting floats as those described in the Smith patent are faced with entirely different problems than a level for determining horizontal or vertical alignment. Requirements that must be fulfilled by a float for containing oil contamination on bodies of water are buoyance, resistance to oil as well as high temperature resistance in the case of a fire.

Applicant respectfully submits that floats for floating booms relate to an entirely different technical field than levels which are placed on solid surfaces in order to determine whether the surfaces are in proper horizontal or vertical alignment.

A level, on the other hand, is a measuring device which must provide great accuracy and must be manipulated by hand for measuring surfaces. The workman must be able to carry the level, move it, position it against a surface, vertically or horizontally, and the self-righting and buoyant properties of a floating body have nothing to contribute to these requirements. A level is not designed to right itself - it is designed to indicate deviations from a horizontal or vertical line. Also, it is of no consequence for a level whether it can float or not.

The particular property required of a level as discussed in the present application is high accuracy - which, as explained in the specification, is hard to achieve with synthetic materials while aluminum level bodies of a hollow configuration make it difficult to attach the bubble level. These are disadvantages for mass-producing level bodies inexpensively.

Surprisingly, great level accuracy can be achieved by producing the level body of a foamed metal, for example, foamed

aluminum. The floats described in the Smith patent do not require a particular accuracy with regard to shape and the reference to Smith also does not provide any suggestion that the use of foamed aluminum could produce a body with particularly high shape precision.

The float described in Smith et al. conveys to a person skilled in the art useful properties in connection with a floating containment, such as buoyance, resistance to oil etc. But a person skilled in the art would not look to a float to find a solution to the problem of producing a level body having great accuracy and planarity.

Claims 1 and 2 are therefore not obvious in view of the cited prior art references.

With respect to claims 3 and 5, the reference to Hettinga is relied upon to show a level frame made of a smooth non-porous skin or coating while the inside is made of foamed material. In the Examiner's view it would therefore have been obvious to provide the device resulting from a combination of Goss and Smith with a non-porous coating as taught by Hettinga.

The reference to Hettinga describes molding of a foamable plastic material in a mold, wherein the amount of plastic introduced into the mold is less than the amount required to fill the mold completely so as to allow foaming. The mold walls are cooled and the material introduced into the mold upon expansion will cool and solidify immediately on the mold wall while the interior of the mold at a higher temperature allows the plastic to expand and form a foamed interior. This is described in col. 4, lines 5-21. Accordingly, the reference teaches a method of producing of the same material in a single molding step a solid shell on a foamed core. This is impossible to carry out with a metal foam and a coating of synthetic material as claimed in claim 3. Moreover, this method cannot be employed for foaming metal.

Accordingly, claim 3 is independently patentable over the art of record.

Claim 5 is also independently patentable because the references do not show a level with a level body of a foamed metal which has an inner portion of highly porous metal and portions adjacent surfaces of the level body which are less porous and form an essentially closed outer skin.

In view of the foregoing, it is submitted that the claims are allowable over the references relied on by the Examiner and the Board is respectfully requested to reverse the decision of the Examiner.

Respectfully submitted,

By F. K. J.
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APPENDIX
CLAIMS ON APPEAL

1. A level comprising a level body and at least one bubble level mounted in the level body, wherein the level body is of a foamed metal.

2. The level according to claim 1, wherein the foamed metal is foamed aluminum.

3. The level according to claim 1, wherein the level body has a coating of a synthetic material.

4. The level according to claim 1, wherein the level body has at least one recess for the at least one bubble level.

5. The level according to claim 1, wherein the level body has an inner portion of highly porous metal and portions adjacent surfaces of the level body which are of a less or hardly porous metal and form an essentially closed outer skin.